

REMARKS

Reconsideration of this application is respectfully requested in view of the foregoing amendment and the following remarks.

Claims 1-45 remain pending in this application. Claims 1-3, 7, 9-12, 15, 19, 21-24, 30, 33, 39-41, and 44-45 have been amended hereby to more clearly distinguish the present invention and to correct matters of form. Support for the amendments may be found throughout the specification, the drawings, and the original claims, for example, at page 3, line 15 – page 4, line 2, page 8 lines 1-17, and page 9 lines 13-20. No new matter enters by these amendments.

For the reasons stated below, Applicant respectfully submits that all claims pending in this application are in condition for allowance.

In the Office Action, claim 2 was objected to, and all of the claims were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hibbard (U.S. Patent Publication No. 2001/0056503) taken alone or in combination with Branson et al. (U.S. Patent No. 6,314,512). These grounds of rejection are respectfully traversed for the following reasons.

The present invention is directed to systems and methods for ensuring that an end user is able to monitor whether xDSL connectivity is currently available or not, by periodically sending a request from the user's computer, to which a response is expected.

As evidenced by the arguments presented by the Examiner, the original claims of the application did not necessarily expressly specify that the request originated from the user's computer. As such, the Examiner relied on Hibbard, which discloses how a network interface device (140), located on the far side of a router (130) from a network of user computers (100,

110, 120), polls a public interface to determine if an Internet connection to another network is active. Obviously, having a network server send a request toward the Internet (and away from the user computers) is completely different from the user initiated requests contemplated by the present invention.

To emphasize the involvement of the user computer, e.g., in originating requests, displaying messages and dialogue boxes, and receiving e-mails, each of the independent claims has been amended to recite limitations that clearly establish that the requests originate on a user computer. For example, amended claim 1 now recites sending a request from a user computer connected via a router and an xDSL connection to a network. This user computer is analogous to one of the user computers (100, 110, 120) of Hibbard.

In contrast, the user computers (100, 110, 120) of Hibbard are not involved in the request process at all. Rather, it is the network interface device (140) of Hibbard, which is analogous to the DNS Server (150) as shown in Figure 1 of the present application, that sends requests outward (away from the user computers). Hibbard discloses no process involving the user computers, nor any communications sent to or displayed on the user computers.

The Federal Circuit has held that a proper analysis under Section 103 requires a consideration of "whether the prior art would have suggested to those of ordinary skill in the art that they should make the claimed composition or device, or carry out the claimed process." *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991). In the present case, there is no art-based suggestion to combine the teachings of these different references, and their combination is improper. Contrary to the Examiner's assertions, and as discussed above, Hibbard does not teach or even suggest

monitoring an individual user's xDSL connectivity status via requests originating from a user computer to which responses are expected.

Even if there were such a suggestion, however, Branson et al. does not supply that which Hibbard lacks. The failure of Hibbard to teach or suggest monitoring xDSL connection status via requests originating from a user computer to which responses are expected is not overcome by the disclosure of Branson et al. The Examiner has argued that Branson et al. teaches the display of a message on a computer to notify the user that a connection has failed, but this alleged teaching does not remedy Hibbard's failure to teach processes or systems involving the end user. Hence, the cited references taken alone or in combination do not teach, suggest, or make obvious the present invention.

The other independent claims have been amended to emphasize this same feature of the present invention. Therefore, all dependent claims should also be patentable over the cited art. As such, it is believed that the obviousness rejection of the claims based on Hibbard and Branson et al. should be reconsidered and withdrawn.

Finally, it is believed that the amendment to claim 2 addresses the concerns raised in the Office Action with respect to that claim. Applicants have made several other corrections of typographical errors in the claims, and respectfully request that the Examiner withdraw the objections thereto.

In view of the foregoing all of the claims in this case are believed to be in condition for allowance. Should the Examiner have any questions or determine that any further action is

Serial No.: 09/669,852
Art Unit: 2153

Attorney's Docket No.: BS00-150
Page 14

desirable to place this application in even better condition for issue, the Examiner is encouraged to telephone applicants' undersigned representative at the number listed below.

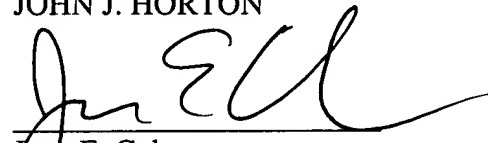
SHAW PITTMAN LLP
1650 Tysons Boulevard
McLean, VA 22102
Tel: 703/770-7900

Date: April 15, 2004

Respectfully submitted,

JOHN J. HORTON

By:


June E. Cohan
Registration No. 43,741

LDE/JEC/lrhj

Customer No. 28970